

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

F.A.O. NO. 636 OF 1990

DATE OF DECISION: 5.7.2006

M/S GILL SANDHU TRANSPORT COMPANY AND ANOTHER

....APPELLANTS

VERSUS

RAM PIARI AND OTHERS

....RESPONDENTS

CORAM: HON'BLE MR. JUSTICE RAJESH BINDAL

**PRESENT: MR. L.M. SURI, SR. ADVOCATE WITH
MR. DEEPAK SURI, ADVOCATE
FOR THE APPELLANTS**

**MR. SUMEET MAHAJAN, ADVOCATE
FOR RESPONDENT NOS. 1 AND 2.**

**MR. P.S. JAHANGIR, ADVOCATE
FOR RESPONDENT NOS. 4 AND 5.**

JUDGMENT

At the very outset, counsel for the appellants states that since a joint appeal on behalf of owner as well as the Insurance Company is not maintainable, let this appeal be treated on behalf of owner only and the appeal on behalf of appellant No.2 i.e. Insurance Company be dismissed as not maintainable. Counsel for the claimants has no objection to this course being adopted. Ordered accordingly.

The present appeal is treated only on behalf of the appellant/owner.

This is an appeal filed against the award of the Motor Accident Claims Tribunal, Ludhiana arising out of MACT case No. 21 of 27.5.1988, decided on 6.4.1990, awarding a sum of Rs. 2,40,000/- to the claimants on account of death of Hem Raj being widow and minor daughter of deceased Hem Raj.

The facts in brief are that on 28.3.1988 at about 9.45 P.M. deceased Hem Raj alongwith Tilak Raj and Sudesh Kumar were going near Sherpur Chowk on their bicycle when truck bearing registration No. HYG 1410 driven by Hardial Singh struck against the cycle of deceased Hem Raj

from behind. Resultantly, Hem Raj received multiple injuries and ultimately he expired. An FIR No. 31 dated 28.3.1988 was registered under Section 279/427/304-A of the Indian Penal Code at Police Station Focal Point, Ludhaina.

The primary contention of learned counsel for the appellants is that the accident did not occur at all, in the alternative, the driver of the truck was not negligent and further the multiplier of 20 applied in the present case is quite excessive. It should have been at the most 16. On the other hand, counsel for the respondents submitted that this is a case of unfortunate death of young male of 28 years leaving behind widow of 24 years and minor daughter of two and a half years. According to the counsel, even though it was a case of enhancement but still at the relevant time due to illiteracy or non availability of proper guidance, appeal for enhancement could not be filed. In any case it is not a case for reduction of compensation and the appeal filed by the appellant deserves to be dismissed.

I have heard learned counsel for the parties.

While discussing the issue regarding rash and negligent driving, the Tribunal recorded the following findings:

“11. In order to prove this issue, the claimants examined Sudesh Kumar as PW2 and Tilak Raj as PW3, both witnesses of occurrence. They have stated that about a year back at about 9.30 PM they were going on their cycles from Sherpur and Hem Raj was ahead of them on a cycle and when they reached Sherpur crossing at about 9.45 PM, a truck bearing registration No. HYG 1410 came from behind and struck against the cycle of Hem Raj as a result of which he fell down on one side of the road and the truck ran over the cycle of the deceased and as a result of fall, the deceased received multiple injuries. They further stated that the truck driver stopped the truck at some distance. The injured was then removed to Civil Hospital Ludhiana by these two persons in a auto rickshaw, where he died. Sudesh Kumar has further stated that when he was going to lodge report with the police,

the ASI of Police Station, Focal Point met them in the chowk and he made statement before him and consequently a case was registered against the accused/driver. Only one question was put to both these witnesses that no such accident, during the course of driving by Hardial Singh had taken place. The statements of both these witnesses of occurrence, therefore stands unrebutted on record and could not be shaken during the course of their cross-examination. There is nothing available on the record to show that these witnesses were not present at the spot at the time of occurrence or they had not witnessed the accident.

12. As against their clear and consistent statements about the accident, the driver of the offending truck, Gurdial Singh appeared as RW1 and he simply stated that no accident had taken place on 28.3.88 with truck bearing registration No. HYG 1410. In his cross-examination, he admitted that he was facing trial in a criminal case for an offence punishable under Section 304-A IPC. So the solitary statement of Gurdial Singh alias Hardial Singh RW1 is not sufficient to rebut the positive statements of Sudesh Kumar and Tilak Raj. The very fact that the truck struck against the deceased from behind shows the rash and negligent act of the driver in not stopping the truck to avoid the accident. So from the evidence produced by the claimants, it is established on record that the death of Hem Raj occurred due to the injuries received by him on account of the rash and negligent driving of the offending truck by Hardial Singh driver. So this issue is proved in favour of the claimants.”

I have perused the award. Counsel for the appellants though took pain to substantiate his plea to the effect that findings regarding rash and negligent driving are perverse but could not succeed by referring to any

of the evidence on record. The statement of witnesses, who were accompanying the deceased Hem Raj at the time of accident could not be brushed aside. It is a case where deceased Hem Raj was hit from behind by the truck. Even the contention of counsel for the appellants to the effect that though in the statement of Sudesh Kumar and Tilak Raj, it was stated that matter was reported to the police but details regarding FIR were not furnished. According to the counsel in absence thereof, even the accident was not proved what to talk of question of negligence on the part of the driver of the offending vehicle. On the other hand, counsel for the respondents submitted that the plea of the appellants is belied from the fact that Gurdial Singh, driver of the offending vehicle appeared as RW-1 and admitted in his cross-examination that he was facing trial in the criminal case for charge under Section 304-A of the Indian Penal Code. Further, even in the award of the Tribunal, number and date of the FIR is clearly recorded as FIR No. 31 dated 28.3.1988. Considering these facts, I am of the view that the contention of the counsel for the appellants is totally misconceived to the effect that in the absence of the FIR, the accident is not proved. Even on the issue of negligence, I do not find any substance in the arguments raised by counsel for the appellants and approve the findings recorded by the Tribunal on this issue.

As far as the question of quantum is concerned, on that issue as well, I do not find any substance in the arguments raised by counsel for the appellants. Admittedly, deceased Hem Raj was 28 years of age, who left behind young widow of 24 years and minor daughter of two and a half years. In such a situation, award of compensation of Rs. 2,40,000/- by applying a multiplier of 20 is not unjustified.

Accordingly, the appeal is dismissed.

July 5, 2006
gsv

(RAJESH BINDAL)
JUDGE